

SHARON McCONVERY (SM 3477)
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Attorneys for Plaintiff, Alliance Capital Management

ALLIANCE CAPITAL MANAGEMENT, : UNITED STATES DISTRICT COURT
IN ITS CAPACITY AS PLAN : SOUTHERN DISTRICT OF NEW YORK
ADMINISTRATOR OF THE ALLIANCE :
CAPITAL MANAGEMENT WELFARE : CASE NO: 1:11-cv-05499-RPP
BENEFIT PLAN, : ECF CASE

Plaintiff(s),

vs.

ERIC ONUFRIK, MICHAEL S.
LANGELLA, ESQ., AND
MICHAEL S. LANGELLA, P.C.

Defendant(s).

COMPLAINT

Plaintiff, Alliance Capital Management, in its capacity as Plan Administrator for the Alliance Capital Management Welfare Benefit Plan, pleads as follows:

PARTIES

1. The Plaintiff, Alliance Capital Management, is the Plan Administrator for the Alliance Capital Management Welfare Benefit Plan, an employee welfare benefits plan governed by the material provisions of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §§ 1001, *et seq.* The Plaintiff is located at 1345 Avenue of the Americas, New York, New York.

2. Upon information and belief, Defendant, Erik Onufrik (hereinafter "Onufrik") is a citizen and resident of New York, with a last known address of 306 Waterside Avenue, Northport, New York.

3. Upon information and belief, Defendant, Michael S. Langella, Esq. (hereinafter "Attorney Langella"), is a citizen and resident of New York, with a last known business address of 2459 Ocean Avenue, Ronkonkoma, New York.

4. Upon information and belief, Defendant, Michael S. Langella, P.C. (hereinafter "the Langella Law Firm"), is a business in the State of New York with offices located at of 2459 Ocean Avenue, Ronkonkoma, New York.

JURISDICTION AND VENUE

5. This action is to enforce the terms of the Plan and for equitable relief under 29 U.S.C. § 1132(a)(3). Consequently, this Court has jurisdiction pursuant to 28 U.S.C. § 1331.

6. Pursuant to 29 U.S.C. § 1132(e)(2), venue is proper in this Court because the Plan is administered in this District.

COUNT ONE

7. Onufrik sustained personal injuries as the result of a motor vehicle accident that occurred on or about June 21, 2005 (hereinafter "the accident").

8. In or about 2006, Onufrik filed a personal injury action alleging that the negligence of third-parties caused the accident and his resultant injuries. The action was entitled "Erik Onufrik and Jennifer Schuman vs. Steven Smith and Budget Air Inc.," Index No. 06-03664, and venued in the Supreme Court of the State of New York, County of Suffolk (hereinafter "the underlying action").

9. Onufrik was represented in the underlying action by Attorney Langella and the Langella Law Firm.

10. At the time of the accident, Onufrik was a "Covered Person" under the Alliance Capital Management Welfare Benefit Plan (hereinafter "the Plan").

11. At all relevant times, the Plan was a self-funded employee welfare benefits plan governed by the material provisions of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §§ 1001, *et seq.*

12. The terms and conditions of coverage under the Plan included the following:

Section 8.2 Reimbursement of Benefits Paid. If the Plan pays benefits for expenses incurred on account of a Covered Person, the Subscriber or any other person or organization that was paid must make a refund to the Plan if all or some of the expenses were recovered from or paid by a source other than the Plan as a result of claims against a third party for negligence, wrongful acts or omissions. The refund equals the amount of the recovery or payment, up to the amount the Plan paid.

If the refund is due from another person or organization, the Covered Person agrees to help the Plan get the refund when requested.

If the Covered Person, or any other person or organization that was paid, does not promptly refund the full amount, the Plan may reduce the amount of any future benefits that are payable under the Plan. The Plan may also reduce future benefits under any other group benefits plan administered by United HealthCare for the Plan Sponsor. The reduction will equal the amount of the required refund. The Plan may have other rights in addition to the right to reduce future benefits.

Section 8.3 Subrogation and Reimbursement. Subrogation is the substitution of one person or entity in the place of another with reference to a lawful claim, demand or right. The Plan Sponsor shall be subrogated to and shall succeed to all rights of recovery, under any legal theory of any type, for the reasonable value of services and benefits provided by the Plan Sponsor to any Covered Person from: (i) third parties, including any person alleged to have caused the Covered Person to suffer injuries or damages; (ii) the employer of the Covered Person; or (iii) any person or entity obligated to provide benefits or payments to

Covered Persons, including benefits or payments for underinsured or uninsured motorist protection (these third parties and persons or entities are collectively referred to as "Third Parties"). The Covered Person agrees to assign to the Plan Sponsor all rights of recovery against Third Parties, to the extent of the reasonable value of services and benefits provided by the Plan Sponsor, plus reasonable costs of collection.

The Covered Person shall cooperate with the Plan Sponsor in protecting the Plan Sponsor's legal rights to subrogation and reimbursement, and acknowledges that the Plan Sponsor's rights shall be considered as the first priority claim against Third Parties, to be paid before any other claims by the Covered Person are paid. The Covered Person shall do nothing to prejudice the Plan Sponsor's rights under this provision, either before or after the need for services or benefits under the Plan. The Plan Sponsor may, at its option, take necessary and appropriate action to preserve its rights under these subrogation provisions, including filing suit in the name of the Covered Person. For the reasonable value of services provided under the Plan, the Plan Sponsor may collect, at its option, amounts from the proceeds of any settlement (whether before or after any determination of liability) or judgment that may be recovered by the Covered Person or his or her legal representative, regardless of whether or not the Covered Person has been fully compensated. Any proceeds of settlement or judgment shall be held in trust by the Covered Person for the benefit of the Plan Sponsor under these subrogation provisions and the Plan Sponsor shall be entitled to recover reasonable attorney fees from the Covered Person incurred in collecting proceeds held by the Covered Person. The Covered Person shall not accept any settlement that does not fully compensate or reimburse the Plan Sponsor without the written approval of the Plan Sponsor. The Covered Person agrees to execute and deliver such documents (including a written confirmation of assignment, and consents to release medical records), and provide such help (including responding to requests for information about any accident or injuries and making court appearances) as may be reasonably requested by the Plan Sponsor.

13. Between June 2005 and April 2008, the Plan paid medical benefits on behalf of Onufrik in the amount of \$60,753.25 (hereinafter "the paid benefits"). The paid benefits were for medical care related to injuries Onufrik sustained in the accident.

14. In or about May 2008, the underlying action was settled for \$250,000.00 (hereinafter "the settlement proceeds") and the action discontinued on or about May 29, 2008.

15. The settlement proceeds obtained in connection with the underlying action included money due the Plan as reimbursement for the paid benefits.

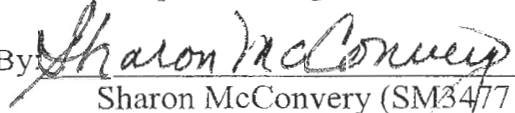
16. Defendants currently have possession and control of the settlement proceeds including the money due the Plan as reimbursement for the paid benefits.

17. Defendants have refused to pay over to the Plan the money due from the settlement proceeds in violation of the above terms and conditions of coverage under the Plan.

WHEREFORE, the Plaintiff requests that an equitable lien/constructive trust be imposed on the settlement proceeds and that the Defendants, consistent therewith, be ordered to pay over the money due the Plan out of such settlement proceeds, including appropriate judgment and post-judgment interest, and any other relief to which the Plaintiff is entitled, including reasonable attorneys' fees and costs pursuant to 29 U.S.C. § 1132(g).

Dated: August 4, 2011

TANSEY, TRACY & CONVERY, ESQS.
221 Jefferson Avenue
Staten Island, New York 10306
(718) 233-3785
Attorneys for Plaintiff,
Alliance Capital Management

By 
Sharon McConvery (SM3477)

JS 44C/SDNY
REV. 5/2010

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for use of the Clerk of Court for the purpose of initiating the civil docket sheet.

PLAINTIFFS

Alliance Capital Management, in its capacity as Plan Administrator of the Alliance Capital Management Welfare Benefit Plan

ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Tansey, Tracy & Convery, Esqs.
221 Jefferson Ave., Staten Island, NY 10306

(718) 233-2785

DEFENDANTS

Eric Onufrik, Michael S. Langella, Esq. and Michael S. Langella, P.C.

ATTORNEYS (IF KNOWN)

CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)
(DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

Action is to enforce terms of employee welfare benefit plan and for equitable relief under ERISA.

Has this or a similar case been previously filed in SDNY at any time? No? ☒ Yes? ☐ Judge Previously Assigned

If yes, was this case Vol. ☐ Invol. ☐ Dismissed. No ☐ Yes ☐ If yes, give date _____ & Case No. _____

(PLACE AN [x] IN ONE BOX ONLY)

NATURE OF SUIT

ACTIONS UNDER STATUTES

TORTS		FORFEITURE/PENALTY		BANKRUPTCY		OTHER STATUTES			
CONTRACT <input type="checkbox"/> 110 INSURANCE <input type="checkbox"/> 120 MARINE <input type="checkbox"/> 130 MILLER ACT <input type="checkbox"/> 140 NEGOTIABLE INSTRUMENT <input type="checkbox"/> 150 RECOVERY OF OVERPAYMENT & ENFORCEMENT OF JUDGMENT <input type="checkbox"/> 151 MEDICARE ACT <input type="checkbox"/> 152 RECOVERY OF DEFAULTED STUDENT LOANS (EXCL VETERANS) <input type="checkbox"/> 153 RECOVERY OF OVERPAYMENT OF VETERAN'S BENEFITS <input type="checkbox"/> 160 STOCKHOLDERS SUITS <input type="checkbox"/> 190 OTHER CONTRACT <input type="checkbox"/> 195 CONTRACT PRODUCT LIABILITY <input type="checkbox"/> 196 FRANCHISE		PERSONAL INJURY <input type="checkbox"/> 310 AIRPLANE <input type="checkbox"/> 315 AIRPLANE PRODUCT LIABILITY <input type="checkbox"/> 320 ASSAULT, LIBEL & SLANDER <input type="checkbox"/> 330 FEDERAL EMPLOYERS' LIABILITY <input type="checkbox"/> 340 MARINE <input type="checkbox"/> 345 MARINE PRODUCT LIABILITY <input type="checkbox"/> 350 MOTOR VEHICLE <input type="checkbox"/> 355 MOTOR VEHICLE PRODUCT LIABILITY <input type="checkbox"/> 360 OTHER PERSONAL INJURY		<input type="checkbox"/> 610 AGRICULTURE <input type="checkbox"/> 620 OTHER FOOD & DRUG <input type="checkbox"/> 625 DRUG RELATED SEIZURE OF PROPERTY <input type="checkbox"/> 630 LIQUOR LAWS <input type="checkbox"/> 640 RR & TRUCK <input type="checkbox"/> 650 AIRLINE REGS <input type="checkbox"/> 660 OCCUPATIONAL SAFETY/HEALTH <input type="checkbox"/> 690 OTHER		<input type="checkbox"/> 422 APPEAL <input type="checkbox"/> 28 USC 158 <input type="checkbox"/> 423 WITHDRAWAL <input type="checkbox"/> 28 USC 157		<input type="checkbox"/> 400 STATE REAPPORTIONMENT <input type="checkbox"/> 410 ANTITRUST <input type="checkbox"/> 430 BANKS & BANKING <input type="checkbox"/> 450 COMMERCE <input type="checkbox"/> 460 DEPORTATION <input type="checkbox"/> 470 RACKETEER INFLUENCED & CORRUPT ORGANIZATION ACT (RICO) <input type="checkbox"/> 480 CONSUMER CREDIT <input type="checkbox"/> 490 CABLE/SATELLITE TV <input type="checkbox"/> 810 SELECTIVE SERVICE <input type="checkbox"/> 850 SECURITIES/COMMODITIES/EXCHANGE <input type="checkbox"/> 875 CUSTOMER CHALLENGE <input type="checkbox"/> 12 USC 3410 <input type="checkbox"/> 890 OTHER STATUTORY ACTIONS <input type="checkbox"/> 891 AGRICULTURAL ACTS <input type="checkbox"/> 892 ECONOMIC STABILIZATION ACT <input type="checkbox"/> 893 ENVIRONMENTAL MATTERS <input type="checkbox"/> 894 ENERGY ALLOCATION ACT <input type="checkbox"/> 895 FREEDOM OF INFORMATION ACT <input type="checkbox"/> 900 APPEAL OF FEE DETERMINATION UNDER EQUAL ACCESS TO JUSTICE <input type="checkbox"/> 950 CONSTITUTIONALITY OF STATE STATUTES	
REAL PROPERTY <input type="checkbox"/> 210 LAND CONDEMNATION <input type="checkbox"/> 220 FORECLOSURE <input type="checkbox"/> 230 RENT LEASE & EJECTMENT <input type="checkbox"/> 240 TORTS TO LAND <input type="checkbox"/> 245 TORT PRODUCT LIABILITY <input type="checkbox"/> 290 ALL OTHER REAL PROPERTY		PERSONAL INJURY <input type="checkbox"/> 362 PERSONAL INJURY - MED MALPRACTICE <input type="checkbox"/> 365 PERSONAL INJURY PRODUCT LIABILITY <input type="checkbox"/> 368 ASBESTOS PERSONAL INJURY PRODUCT LIABILITY PERSONAL PROPERTY <input type="checkbox"/> 370 OTHER FRAUD <input type="checkbox"/> 371 TRUTH IN LENDING <input type="checkbox"/> 380 OTHER PERSONAL PROPERTY DAMAGE <input type="checkbox"/> 385 PROPERTY DAMAGE PRODUCT LIABILITY		LABOR <input type="checkbox"/> 710 FAIR LABOR STANDARDS ACT <input type="checkbox"/> 720 LABOR/MGMT RELATIONS <input type="checkbox"/> 730 LABOR/MGMT REPORTING & DISCLOSURE ACT <input type="checkbox"/> 740 RAILWAY LABOR ACT <input type="checkbox"/> 790 OTHER LABOR LITIGATION <input checked="" type="checkbox"/> 791 EMPL RET INC SECURITY ACT		PROPERTY RIGHTS <input type="checkbox"/> 820 COPYRIGHTS <input type="checkbox"/> 830 PATENT <input type="checkbox"/> 840 TRADEMARK		SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 BLACK LUNG (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID TITLE XVI <input type="checkbox"/> 865 RSI (405(g))	
ACTIONS UNDER STATUTES CIVIL RIGHTS <input type="checkbox"/> 441 VOTING <input type="checkbox"/> 442 EMPLOYMENT <input type="checkbox"/> 443 HOUSING/ACCOMMODATIONS <input type="checkbox"/> 444 WELFARE <input type="checkbox"/> 445 AMERICANS WITH DISABILITIES - EMPLOYMENT <input type="checkbox"/> 446 AMERICANS WITH DISABILITIES - OTHER <input type="checkbox"/> 440 OTHER CIVIL RIGHTS		PRISONER PETITIONS <input type="checkbox"/> 510 MOTIONS TO VACATE SENTENCE <input type="checkbox"/> 20 USC 2255 <input type="checkbox"/> 530 HABEAS CORPUS <input type="checkbox"/> 535 DEATH PENALTY <input type="checkbox"/> 540 MANDAMUS & OTHER <input type="checkbox"/> 550 CIVIL RIGHTS <input type="checkbox"/> 555 PRISON CONDITION		IMMIGRATION <input type="checkbox"/> 462 NATURALIZATION APPLICATION <input type="checkbox"/> 463 HABEAS CORPUS-ALIEN DETAINEE <input type="checkbox"/> 465 OTHER IMMIGRATION ACTIONS		FEDERAL TAX SUITS <input type="checkbox"/> 870 TAXES (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-THIRD PARTY <input type="checkbox"/> 26 USC 7609			

Check if demanded in complaint:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DO YOU CLAIM THIS CASE IS RELATED TO A CIVIL CASE NOW PENDING IN S.D.N.Y.? IF SO, STATE:

DEMAND \$ _____ OTHER _____ JUDGE _____ DOCKET NUMBER _____

Check YES only if demanded in complaint
JURY DEMAND: ☐ YES ☒ NO

NOTE: Please submit at the time of filing an explanation of why cases are deemed related.

(PLACE AN x IN ONE BOX ONLY)

ORIGIN

- ☒ 1 Original Proceeding
 ☐ 2a. Removed from State Court
 ☐ 3 Remanded from Appellate Court
 ☐ 4 Reinstated or Reopened
 ☐ 5 Transferred from (Specify District)
 ☐ 6 Multidistrict Litigation
 ☐ 7 Appeal to District Judge from Magistrate Judge Judgment
- ☐ 2b. Removed from State Court AND at least one party is pro se.

(PLACE AN x IN ONE BOX ONLY)

BASIS OF JURISDICTION

- ☐ 1 U.S. PLAINTIFF
 ☐ 2 U.S. DEFENDANT
 ☒ 3 FEDERAL QUESTION (U.S. NOT A PARTY)
 ☐ 4 DIVERSITY

IF DIVERSITY, INDICATE
CITIZENSHIP BELOW.
(28 USC 1322, 1441)

CITIZENSHIP OF PRINCIPAL PARTIES (FOR DIVERSITY CASES ONLY)

(Place an [X] in one box for Plaintiff and one box for Defendant)

CITIZEN OF THIS STATE	PTF DEF [] 1 [] 1	CITIZEN OR SUBJECT OF A FOREIGN COUNTRY	PTF DEF [] 3 [] 3	INCORPORATED and PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE	PTF DEF [] 5 [] 5
CITIZEN OF ANOTHER STATE	[] 2 [] 2	INCORPORATED or PRINCIPAL PLACE OF BUSINESS IN THIS STATE	[] 4 [] 4	FOREIGN NATION	[] 6 [] 6

PLAINTIFF(S) ADDRESS(ES) AND COUNTY(IES)

Alliance Capital Management - Plan Administrator for Alliance Capital Management Welfare Benefit Plan
 1345 Avenue of the Americas
 New York, New York (New York County)

DEFENDANT(S) ADDRESS(ES) AND COUNTY(IES)

Erik Onufrik, 306 Waterside Avenue, Northport, New York (Suffolk County)
 Michael S. Langella, Esq., 2459 Ocean Avenue, Ronkonkoma, New York (Suffolk County)
 Michael S. Langella, P.C., 2459 Ocean Avenue, Ronkonkoma, New York (Suffolk County)

DEFENDANT(S) ADDRESS UNKNOWN

REPRESENTATION IS HEREBY MADE THAT, AT THIS TIME, I HAVE BEEN UNABLE, WITH REASONABLE DILIGENCE, TO ASCERTAIN THE RESIDENCE ADDRESSES OF THE FOLLOWING DEFENDANTS:

Check one: THIS ACTION SHOULD BE ASSIGNED TO: ☐ WHITE PLAINS ☒ MANHATTAN
 (DO NOT check either box if this a PRISONER PETITION.)

DATE 08/04/2011 SIGNATURE OF ATTORNEY OF RECORD

ADMITTED TO PRACTICE IN THIS DISTRICT

☐ NO
☒ YES (DATE ADMITTED Mo. 08 Yr. 1996)
 Attorney Bar Code #sm3477

RECEIPT #

Magistrate Judge is to be designated by the Clerk of the Court.

Magistrate Judge _____ is so Designated.

Ruby J. Krajick, Clerk of Court by _____ Deputy Clerk, DATED _____.

UNITED STATES DISTRICT COURT (NEW YORK SOUTHERN)